## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

## PRIME HEALTHCARE SERVICES-ENCINO, LLC D/B/A ENCINO HOSPITAL MEDICAL CENTER

and Cases 31-CA-066061

31-CA-070323

**SEIU LOCAL 121RN** 

and Case 31-CA-080554

SEIU UNITED HEALTHCARE WORKERS-WEST

PRIME HEALTHCARE SERVICES-GARDEN GROVE, LLC D/B/A GARDEN GROVE HOSPITAL & MEDICAL CENTER

and Case 21-CA-080722

SEIU UNITED HEALTHCARE WORKERS-WEST

## ORDER1

The Unions' request for special permission to appeal the October 29 and December 4, 2013 Orders of Administrative Law Judge Jeffrey D. Wedekind, denying their motions for reconsideration and motion to strike, respectively, are denied. The Unions have failed to establish that the judge abused his discretion.<sup>2</sup>

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<sup>&</sup>lt;sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>&</sup>lt;sup>2</sup> Chairman Pearce and Member Schiffer note that the Respondent's burden of establishing a conflict of interest as an affirmative defense is a heavy one requiring, inter alia, a showing of a clear and present danger of interfering with the collective bargaining process. *Beverly Enterprises North Dakota, Inc. d/b/a Garrison Nursing Home*, 293 NLRB 122 (1989); *Western Great Lakes Pilots Association*, 341 NLRB 272 (2004). They further note that the Board has not recognized, as a defense to such a refusal to bargain allegation, the type of claims asserted by the Respondent in this case. Indeed, the Respondent's claims center on union and other protected activities that the

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MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

NANCY SCHIFFER, MEMBER

Board has long recognized serve unions' legitimate interests. See, e.g., *Montauk Bus Co.*, 324 NLRB 1128, 1136-1137 (1997) (union's solicitation of school district to cancel nonunion employer's contract and reassign work to union contractor was protected and did not create a disabling conflict of interest); see generally *Aztech Electric Co.*, 335 NLRB 260, 270 (2001) (Members Liebman and Walsh, concurring) (discussing the wide scope of protected activity in relation to the narrow scope of the "disabling conflict" defense). However, under the highly deferential abuse-of-discretion standard, the Unions failed to establish that the judge abused his discretion by failing to grant their motion to strike the affirmative defense or by denying their motions for reconsideration, which require a showing of extraordinary circumstances. Sec. 102.48(d)(1) of the Board's Rules and Regulations.